IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1989 OF 1995

Farid Abdul Latif Noorani
Hira Panna, “A” Wing,
9th Floor, Haji Ali,
Bombay - 400 034. ..Petitioner

V/s.

1. State of Maharashtra through the
Hon'ble Home Minister, Mantralaya,
Bombay.

2. The Secretary to the Government of
Maharashtra, Home Department,
(Appeals in Security)being Shri V.H.
Sakhalkar, Mantralaya, Bombay).

3. Shri. S.S. Howal,
The Asstt. Commissioner of Police,
Nagpada Division, Bombay.

4. Shri Tyagi,
The Commissioner of Police for
Greater Bombay. ...Respondents

Ms.Snehal Paranjape i/b. M/s. Federal & Rashmikant for Petitioner.
Mr.G.W. Mattos, AGP for Respondents.

CORAM : V.M. KANADE, J.
DATE : 04/06/07.

ORAL JUDGEMENT:

1. Heard learned counsel for the Petitioner and learned AGP for the Respondents.

2. By this petition which is filed under Article 226 of Constitution of India, the Petitioner is challenging the order passed by the Competent Authority in respect of two Eating Houses which are run by the Petitioner herein, whereby its licence which was granted to the Petitioner has been cancelled. The Petitioner is also challenging the order passed by the Appellant Authority who by its order dated 17th October, 1995, has confirmed the order passed by the Competent Authority.

3. Brief facts which are relevant for the purpose of deciding this petition are as under:-

The Petitioner is carrying on business of selling fruit juices and snacks in two Eating Houses namely “Haji Ali Juice Centre” and “Cafe Noorani”. The Petitioner was granted Certificate of Registration in respect of Eating House known as “Haji Ali Juice Centre” which was well known as “Race-View Juice Corner” in the year 1971 and this Certificate was validly renewed from time to time. In 1985, the Petitioner changed name of Eating House from “Race-View Juice Corner” to “Haji Ali Juice Centre”. In 1986, the Petitioner started another Eating House as “Cafe Noorani” which was also situated near Haji Ali Circle, Bombay and Certificate of Registration

was also issued in respect of this Eating House and same has been renewed from time to time.

4. On 26/05/1995, a show-cause notice was issued by the Respondent No.3. Said show-cause notice alleged that the Petitioner had kept the Eating Houses open beyond prescribed period. It was stated therein that by virtue of Certificate of Registration which was granted to the Petitioner, the Petitioner was entitled to operate his Eating Houses from 5.00 a.m. in the morning to 1.30 a.m. and that the Petitioner had committed breach of the aforesaid conditions. The details were mentioned in the said notice and five instances were quoted in respect of Eating House “Haji Ali Juice Centre” and 11 instances were given respect of Eating House “Cafe Noorani”. It was stated in the said show cause notice that the Petitioner had committed breach of the conditions which were imposed by him and had thereby, violated the provisions of Section 33(W) r/w 131(5) of the Bombay Police Act (hereinafter referred to as 'the Act') and caused nuisance to the persons residing in the neighbourhood and therefore, the Petitioner was asked to show cause why his licence should not be revoked.

5. The Petitioner gave reply to the said show cause notice.

The Competent Authority-Respondent No.3 herein passed two separate orders in respect of two separate Eating Houses, cancelled Registration Certificates by order dated 7th August, 1995.

6. Being aggrieved by the said orders, the Petitioner preferred an appeal U/s.33 of the Act. Second Respondent-Secretary of Maharashtra Government set aside the other finding recorded by the Competent Authority. Further Second Respondent upheld the finding recorded by the Competent Authority on the question of running Eating Houses beyond prescribed period and on the said ground, confirmed order of revocation of licence. Being aggrieved by the aforesaid orders passed by Respondent No.3 and Respondent No.2, the Petitioner has preferred the petition under article 226 of Constitution of India.

7. Learned counsel for the Petitioner submitted that the show cause notice which was issued by the Competent Authority itself was liable to be quashed and set aside since the provisions of Section 33(w) of the Act are not applicable to the Eating Houses which are run by the Petitioner herein. She invited my attention to the provisions of Section 33(w) of the Act and pointed out that said provisions would be applicable in respect of establishments which

are used as places of public amusement or entertainment. She further submitted that admittedly, the Petitioner was running Eating Houses which did not have facility of public amusement or entertainment. She also invited my attention to the provisions of Section 33(xa) of the Act and submitted that separate permission for running Eating House was not required as such provisions merely stipulated that once the Certificate of Registration was granted that by itself would be deemed to be a written permission under the Act. She further submitted that the Competent Authority did not have the power to prescribe time or conditions of the Registration Certificate. She submitted that Section 33 of the Act provided that authority had power to use rules and regulations in respect of traffic and for preservation of order in public place and therefore, this power did not pertain to prescribing timing for the purpose of carrying on said business. She further submitted that Section 35(5) however circumscribed the said power granted in Section 35(I) and said provision clearly laid down that rules framed by the local authority would have overriding effect over any rule made by the Competent Authority under the act. She submitted that under the Mumbai Municipal Corporation Act(Sections 394 and 471 r/w Schedule M) also laid down penalty which was to be levied for the breach of

conditions of registration. She submitted that Municipal Corporation had not taken any action under the aforesaid provisions. She submitted that under Section 33(7) of the Act, the Competent Authority had power to grant registration or renewal to a person of a notoriously bad character. She submitted that this was only ground on which Certificate of Registration could be refused by the Government. She submitted that Section 33(xa) of the Act did not empower police authority to prescribe any time for keeping open Eating House. She further submitted that the Eating House Registration Rules 1969 also did not provide for any time limit to be prescribed by the police authorities. She further submitted that this provision was made under the Bombay Shops and Establishment Act, 1948 and the said Act prescribed timing of the Eating House. She further submitted that admittedly, no proceedings had been initiated under the Bombay Shops and Establishment Act, 1948. She further submitted that proceedings under Section 33(1)(w) of the Act would be initiated by the police only if prior sanction for investigation had been obtained U/s.155 of Cr.P.C. She submitted that admittedly, such sanction had not been obtained therefore, entire prosecution which was launched by the Respondents was without jurisdiction since mandatory provision U/s.155 of Cr.P.C.

was not followed. She further submitted that both the lower authorities had erred in holding that the Petitioner has been convicted by the Magistrate. She further submitted that the Magistrate had merely forfeited the bail bond deposits and this did not amount to a conviction. She further submitted that cases which were contested by the Petitioner ended in acquittal. She submitted that therefore, both the authorities had committed an error of law which was apparent on the face of record by treating the order of forfeiture of bail bond deposits as conviction. She further submitted that the Appellant Authority erred in holding that Section 151(A) of the Act empowered the court to take appropriate proceedings. She further submitted that the said provision was applicable only to the person pleading guilty. In the present case, accused did not plead guilty but his bail bond deposits had been forfeited since he was absent. She therefore, submits that in any case both the authorities had not acted reasonably in cancelling Certificate of Registration and that the order was harsh and disproportionate to the alleged breach of conditions. She further submitted that after the interim relief was granted and petitioner was allowed to continue to run his Eating Houses, at that time undertaking was given by the Petitioner to this Court that he would not commit breach of the said conditions

in future. She further submitted that from 1995 he had not committed breach of the said conditions and at no time any case was registered against the Petitioner or any of his employees.

8. Learned AGP for the State submitted that U/s.162(2) of the Act, the Competent Authority had power to cancel or suspend Certificate of Registration if it was found that conditions which were imposed have been violated by the licencee. He further submitted that it would not be safe to say that the Competent Authority did not have power to revoke the licence. He further submitted that though provisions of Section 33(w) of the Act were not applicable to the Eating Houses conducted by the Petitioner, yet show cause notice clearly mentioned that the Petitioner had violated the conditions which were imposed at the time of granting Certificate of Registration regarding timing to run the Eating Houses. He invited my attention to the Certificate of Registration and pointed out that initially time which was prescribed by the authority was between 5.00 a.m. to 12.00 mid night which was later on increased to 1.30 a.m. He further submitted that U/s.33(1)(xa) of the Act, the police authorities had power to impose conditions and accordingly, said conditions of timing had been imposed. He further submitted that

though notice was purportedly issued U/s.33(1)(w) of the Act, in fact, notice was issued for violation of Section 33(1)(xa) of the Act. He further submitted that merely because show cause notice wrongly mentioned Section 33(w) of the Act, that by itself would not vitiate the proceedings. He submitted that the Competent Authority had, therefore, power to prosecute the Petitioner. He invited my attention to the reasoned order passed by the authority and therefore, there was no occasion for this court to interfere with the order while exercising writ jurisdiction under article 226 of Constitution of India.

9. I have given my anxious consideration to the submissions of the learned counsel for the Petitioner and the learned AGP for the State. In my view, authorities have clearly proceeded on an erroneous footing and have issued show cause notice U/s.33(w) of the Act. Admittedly, Eating Houses of the Petitioner are not used for the public amusement or entertainment and therefore, provisions of Section 33(w) of the Act are not applicable to the Eating Houses which are run by the Petitioner. Entire proceedings, in my view, are vitiated on account of non-application of mind on the part of the Respondent No.2 and 3 and on that ground alone show cause notice as also impugned orders which are passed by the

Respondent No.2 and 3 are liable to be quashed and set aside. Even otherwise assuming for the sake of argument that the authorities were justified in issuing show cause notice to the Petitioner herein for operating Eating Houses beyond the prescribed time, even then the Respondents ought to have acted reasonably and should not have resorted to cancellation of the Certificate of Registration. It is an admitted position that in the rest of cases which were contested by the Petitioner that he had been acquitted by the learned Magistrate. In respect of other cases only order that has been passed by the Magistrate was of forfeiture of bail bond deposits. Forfeiture of bond deposits can not be treated as a conviction. The Competent Authority and Appellant Authority, in my view, erred clearly in treating cancellation of bail bond deposits as a conviction.

10. It is an admitted position that no other criminal proceedings are initiated against the Petitioner or any of his employees and the ground on which Certificate of Registration is cancelled is because of his failure to close Eating Houses in time. Even if it is assumed for the sake of argument that the Petitioner has committed breach of said conditions, that by itself would not warrant

cancellation of the Certificate of Registration. The cancellation of Certificate of Registration, accordingly, is disproportionate and on that ground also impugned orders are liable to be set aside. It is an admitted position that after the Petitioner had given an undertaking to this court, there has been no complaint of breach of said conditions. More than 12 years have passed. No complaint has been received either from the Respondents, neighbourhood or police authority or traffic police also.

11. In the result, writ petition is allowed. Impugned order dated 7th August, 1995 passed by the Assistant Commissioner of Police, Nagpada Division, Bombay in respect of “Haji Ali Juice Centre” as also order of the same date which is passed in respect of “Cafe Noorani” and order dated 17th October, 1995 which is annexed at Ex.V in appeal No.REH 0195/80-SPL-5 are quashed and set aside as also show cause notices dated 26th May, 1995, Ex.E and Ex.F are also quashed and set aside. Rule is made absolute in above terms. Undertaking given by the Petitioner however, shall continue. Needless to say that the Petitioner will have to apply for the renewal of Certificate of Registration year to year and the Respondents shall be at liberty to fix time as per circulars which are

issued by the Government from time to time. It is clarified that in the event Respondents allege any breach of an undertaking given by the Petitioner herein to this court, it shall be open for them to take out appropriate proceeding in accordance with law and same shall not be treated as contempt of this court. Parties to act on authenticated copy of the order. Certified copy is expedited.

(V.M. KANADE, J.)